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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation; AND SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-PAL

ORACLE'S OPPOSITION TO RIMINI STREET, INC.'S AND SETH RAVIN'S RULE 50(a) MOTION FOR JUDGMENT AS A MATTER OF LAW

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I. INTRODUCTION

The evidence at trial establishes, publicly and for the first time, the full scope of Ravin and Rimini's unlawful acts. They built a business through pervasive, undisputed, and unauthorized downloading and copying of Oracle's software and support materials, and by lying about their illegal conduct. Defenses and deposition testimony have been shown to be a cover-up ordered by Seth Ravin. The evidence of intentional unlawful acts by Ravin and Rimini is overwhelming, and Oracle's claims are all well-supported.

Defendants' Rule 50 motion is meritless. Defendants seek judgment only by ignoring the evidence presented at trial and the Court's prior orders. Despite the Court's summary judgment orders, and Rimini's stipulated copyright infringement liability, Defendants even request judgment, in full, on Oracle's copyright infringement claims. As explained below, Oracle's claims are supported by the evidence at trial, and there is no basis to grant any aspect of Defendants' Rule 50 motion. The jury is entitled to rule on Oracle's claims and award damages.

II. SUMMARY OF EVIDENCE

Unlicensed Copying. Rimini copied "massive amounts" of Oracle software and support materials, without ever obtaining any license from Oracle. Trial Transcript ("Tr.") 165:12-16 (Davis); 302:3-4 (Ravin). Rimini had "thousands and thousands" of copies of Oracle software on Rimini servers. Tr. 551:10-18 (Ravin).[1] These copies were not, as Rimini claimed before trial, "backups." Rimini created and used full working copies of the PeopleSoft, JD Edwards, and Siebel software as "environments" on Rimini's servers. Tr. 303:1-5, 320:13-321:2, 758:23-759:4, 760:8-15 (Ravin); 1146:5-17 (Chiu); 1757:14-1758:11 (Whittenbarger). Backups are stored on tapes or other storage, unmodified. Tr. 730:4-11 (Ravin); Tr. 180:5-181:17, 182:16-24 (Davis). Copies used for troubleshooting, support, testing, or development are not backups. Tr. 180:5-181:17, 182:16-24 (Davis). No license permitted those copies. PTX 1458, 5328 (stipulations).

[1] Defendants stipulated that Rimini reproduced copyrighted PeopleSoft, Siebel, JD Edwards, and Oracle Database software, and that Oracle is the copyright owner for that software. Dkt. 528 at 17–19 and Ex. A.

Rimini's unlicensed copying included widespread "cross-use" of Oracle software and support materials. After years of false denials and perjury by Ravin and others,[2] Ravin finally admitted to this cross-use and that it occurred "all the time." Tr. 799:6-12 (Ravin). Rimini's cross-use included unlicensed "cloning" of Oracle software (copying an environment created ostensibly for one customer for another customer) and using unlicensed "development" environments to create updates and fixes for multiple customers. Tr. 320:2-7, 371:5-9, 374:12-15, 551:23-25, 552:1-5, 777:22-24 (Ravin); 1365:23-1366:14, 1380:18-1381:8 (Williams); 192:22-193:7, 197:21-24, 198:24-199:11, 205:6-10 (Davis). Ravin knew this "from the very beginning" (Tr. 809:19-810:6 (Ravin)), and this was not limited to PeopleSoft. Tr. 1659:16-1661:4 (Grigsby). Ravin denied there was a library, then testified there was a library with installation media only, and installation media only for PeopleSoft. Tr. 242:14-20, 247:17-25 (Ravin). All of this was false.

Rimini's "software library"—that Ravin and Rimini falsely stated never existed—was massive. PTX 10; Tr. 166:9-20 (Davis); 242:1-3, 242:14-20 (Ravin). Ravin approved copying to that library (PTX 4, 5), which included software and documentation for all of the products at issues: PeopleSoft, JD Edwards, Siebel, and Database. Tr. 167:5-10 (Davis). Rimini did not keep track of how that library was used or audit the library, and Rimini deleted that library shortly before Oracle filed this lawsuit. Tr. 170:24-171:10 (Davis); 421:18-20, 422:21-423:4 (Ravin). The "extracts" that Rimini gave its customers were also unlicensed copies. Rimini told customers that it was creating separate extracts for each customer, but Rimini was using log-ins to copy all materials from Oracle's websites and then copying disks that Rimini then gave out to multiple customers. Tr. 333:9-334:3, 335:12-16 (Ravin); 1160:15-1161:10 (Hicks).

None of this unlicensed copying was mistaken or in "good faith." Rimini's very first customer sent Rimini a copy of its software license (PTX 540), and many other customers sent copies of their license agreements and told Rimini that it was not permitted to copy the software. PTX 15, 16, 18, 23, 31; Tr. 432:9-13 (Ravin). Ravin knew about the restrictions on

[2] Ravin lied about this during his 2010 deposition, denying the existence of any cross use. Tr. 804:20-805:5 (Ravin).

copying, which were clear and unambiguous. Tr. 635:10-12 (Ravin); 836:14-16, 838:4-10 (Allison). On the other hand, Ravin and Rimini sometimes claimed the opposite, that they had no access to licenses, meaning that they were deliberately building a business on copying without knowledge of any license.

After Oracle sued TomorrowNow, and after TomorrowNow stopped using local environments of Oracle's software and SAP admitted wrongdoing, Ravin "did not change [Rimini's] business model" and told customers that TomorrowNow's policies were "ridiculous." Tr. 819:5-18 (Ravin); PTX 30. Rimini's willfulness is further demonstrated by its efforts to conceal its unauthorized copying, both by deleting the library and deleting records of its cross-use. PTX 136; Tr. 211:5-24 (Davis); Dkt. 466 at 17 ("Rimini's deletion of the software library was willful . . . .").

Unauthorized Downloading. Rimini also engaged in widespread misuse of customer log-ins and unauthorized downloading from Oracle's websites. Rimini used customer log-ins to download massive amounts of materials, for multiple clients, including materials customers were not authorized to download. Tr. 1751:4-16 (Whittenbarger); PTX 7. Rimini downloaded PeopleSoft and JD Edwards materials before Rimini even had any clients for those products. PTX 4, 5, 6; 289:5-10 (Ravin). Rimini used "automated" downloading tools that Ravin and Rimini knew were not authorized and which harmed Oracle's systems. Tr. 479:3-11, 769:9-10, 769:22-25 (Ravin); 1140:17-20 (Chiu). Rimini violated the license terms posted on Oracle's website because it wanted to "help [it]self" to the so-called "buffet" of Oracle software for its own use. PTX 1, 2.

Ravin directed Rimini's unauthorized downloading. After TomorrowNow – Ravin's former company – used "scrapers" on Oracle's website, Oracle prohibited access using automated tools. Tr. 867:16-869:15 (Allison); 480:24-481:5 (Ravin). Ravin and others at Rimini read and knew about those restrictions. PTX 20; Tr. 480:10-14 (Ravin). Ravin then made the decision to use those automated tools "despite those changes." Tr. 482:11-19, 726:20-24 (Ravin); PTX 21, 22, 27. Rimini was trying to stay under "the radar" (PTX 621), but Oracle eventually discovered the downloading due to Rimini's "massive download volumes" (PTX

42). Rimini employees worried that Oracle was "onto us" (PTX 42). And even after Oracle provided specific notice that conduct was harming Oracle's systems, and even after Rimini's customer told it bluntly, "Apparently this is illegal," PTX 43, Rimini persisted with that unlawful downloading.

Rimini's unauthorized access harmed Oracle's systems, causing slowdowns, errors, and deadlocks, and eventually crashing Oracle's server. Tr. 1172:9-15, 1174:5-1175:1, 1179:9-23 (Hicks); 1210:22-1211:10 (Renshaw). Rimini used the IDs for multiple customers to "crawl" Oracle's website, causing more than 184,000 deadlocks. Tr. 1180:19-1181:4 (Hicks). Rimini's "crawls" led to errors and eventually "crashed" Oracle's systems. Tr. 1201:14-1202:11; 1210:5-1211:10 (Renshaw); PTX 665, 669. Rimini proceeded with the unauthorized downloading even after Oracle sought to block certain IP addresses. Tr. 769:4-770:9 (Ravin); 1171:7-1172:8, 1175:17-1176:3 (Hicks).

Unlawful Interference. To obtain customers, and in addition to the unauthorized downloading, Ravin and Rimini repeatedly lied to the entire customer base about Rimini's processes. Rimini used "standard messaging" materials, including FAQs, that Rimini's sales and marketing teams used with customers. Both Mr. Maddock and Mr. Rowe testified that the purpose of these materials was to ensure consistent messaging to customers. Tr. 1396:5-14, 1398:2-13 (Maddock). Those materials made false representations, including that Rimini did not share software between customers, that Rimini developed updates "for each client independently," and that environments would be "used exclusively to support that customer." Tr. 1398:20-1399:7, 1400:17-20, 1423:5-20, 1431:20-1432:8 (Maddock). Ravin also admitted that Rimini represented, among other things, that there was no software library, that Rimini instead used "silos" for customers, that the issues at TomorrowNow "can't happen" at Rimini, and that security updates "weren't necessary." Tr. 242:21-23, 245:3-6, 248:1-4, 318:23-319:9, 421:2-17, 427:19-25, 430:9-24, 446:1-9 (Ravin). These standard messages were all false. Rimini's head of sales acknowledged that his 30(b)(6) testimony to the contrary was false. Tr. 1409:21-1410:1, 1431:20-1432:8 (Maddock). Yesterday, Rowe, the head of marketing, did the same. Other Rimini employees made similar confessions. *E.g.*, Tr. 1382:17-21, 1383:4-14

(Williams). Furthermore, Ravin was the originating source of these false statements, which sales and marketing then disseminated directly to customers.

Harm To Oracle. The evidence establishes that Rimini caused Oracle's losses, totaling $245.9 million, not including punitive damages, prejudgment interest, or attorney's fees. As stated in Rimini's documents and agreed to by Ravin, "Rimini Street separates Oracle from its acquired licensees – denying Oracle recurring revenue . . . ." PTX 3; Tr. 546:8-13 (Ravin). Rimini documents and testimony by Rimini employees and customers confirm that, apart from TomorrowNow, Rimini had "no competition" other than Oracle itself. PTX 5350; Tr. 1527:17-1528:2 (Carter). Customers were "typically evaluating between moving to alternative support with Rimini Street or staying with the software vendor." PTX 241. Customers testified, repeatedly, that they would not have left Oracle for Rimini if they had known of Rimini's unlawful conduct. *E.g.*, Tr. 1389:7-1390:1 (Higa); 1528:19-1529:2 (Carter); 1533:19-25, 1534:15-21 (Ward). Oracle's damages calculations are well-established and conservative, and in the end less than the $300 million Rimini told customers and investors it was taking from Oracle. Tr. 1833:20-1835:6, 1837:1-9 (Dean); 548:12-549:11 (Ravin); PTX 5469.

III. LEGAL STANDARD

Rule 50(a) permits judgment on an issue only if a reasonable jury would have *no* "legally sufficient evidentiary basis to find for the [non-moving] party on that issue." Fed. R. Civ. P. 50(a); *see Krechman v. Cnty. of Riverside*, 723 F.3d 1104, 1109 (9th Cir. 2013) (same). Rule 50(a) is discretionary; the Court "is not required" to grant it. 9B Wright & Miller, Federal Practice & Procedure, § 2533 (3d ed. 2015); *see Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 399-400 (2006) (Rule 50(a) motions are decided "at the court's discretion").

In deciding a Rule 50 motion, the Court "may not substitute its view of the evidence for that of the jury." *Krechman*, 723 F.3d at 1110. The Court, therefore, must "draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). Moreover, the Court "must disregard all evidence favorable to the moving party that the jury is not required to believe." *Id.* at 151.

IV. ARGUMENT

We address the liability issues for each cause of action below, and then address the overlapping damages issues, equitable relief, punitive damages, and finally Defendants' motion for a new trial.

A. Defendants Are Liable For All Copyright Infringement Claims

Defendants do not dispute that Rimini committed prima facie copyright infringement. Nor can they, given the undisputed (and largely stipulated) evidence of infringement and the adverse inference instruction that the Court has granted Oracle in light of Rimini's spoliation of the software library. Dkt. 466 at 20.

1. No License Excuses Defendants' Copying

Defendants have no license defense as to PeopleSoft and Oracle Database. Defendants have "stipulated to liability as to the PeopleSoft software," rendering their license defense irrelevant. Dkt. 766 at 19; *see also* Dkt. 474 at 8-20; Dkt. 599 at 1-2. The Court has rejected Defendants' express license defense for Oracle Database. Dkt. 476 at 15-16. Defendants' motion must be denied as to these product lines.[3]

As to the JD Edwards and Siebel product lines, this Court already found that the JD Edwards license for Giant Cement (PTX 704) and the Siebel license for Novell (PTX 705) permit copies for "archival" and "backup" purposes only. Dkt. 474 at 22, 24. Mr. Allison's testimony at trial established that those licenses were representative of the JD Edwards and Siebel licenses generally, as both companies "used form license agreements." Tr. 1117:25-1118:5, 1118:15-19 (Allison). Defendants have not introduced into the record any JD Edwards

[3] Documentation is subject to the same license construction that the Court provided on summary judgment. *E.g.*, PTX 698, at 5 (defined term "Software" includes "Documentation"), id. at 1, Section 1.1 (license grant for "Software" limited to "solely for Licensee's internal data processing operations at its facilities"); *see also* Dkt. 474 at 12 ("Oracle asserts, and the court agrees, that Section 1.2(b)(i), which authorizes a reasonable number of copies for 'use in accordance with the terms set forth herein' is subject to the licensing restrictions outlined in Section 1.1 of the City of Flint's license [PTX 698]. A 'use in accordance with the terms set forth herein' necessarily means that use of the licensed software under this provision is subject to all other licensing restrictions identified in the same main section, in this case Section 1 of the City of Flint's license."). No license to the contrary has been admitted.

or Siebel licenses with contrary terms. Rimini argued at trial that some licenses could not be found, but in the absence of a customer license, Rimini has no license defense.

Rimini's copies of software and support materials were not solely for archive or back-up purposes. Oracle's expert and Ravin himself defined an "archive" or "backup" as a "copy . . . put on a physically different place," on a "separate disk" or otherwise "put aside." Tr. 180:5-181:17, 182:16-24 (Davis); *see also* Tr. 362:21-363:23 (Ravin) (discussing archives shipped to customers on DVDs or USB drives and backups on tape drives). Further, as explained by Dr. Davis, an environment used for development, testing, troubleshooting, or for any purpose other than disaster recovery is not an archive or backup. Tr. 182:16-24 (Davis).

The jury may properly determine from the evidence adduced at trial that Rimini's JD Edwards and Siebel environments were not "backup" or "archival" copies because they were "general development test environments" or otherwise used for testing, development, support, and troubleshooting. Tr. 320:8-321:6, 366:9-369:6 (Ravin) (Rimini's practice for Siebel environments was to "use a generic environment for a particular release of the product" to support "other multiple customers."), 758:22-759:4,760:8-15 (JD Edwards software on Rimini's systems were "used for diagnostics and support."); 180:9-22, 182:16-183:4 (Davis); 1146:5-25 (Chiu) ("explaining that Rimini's internal Siebel environments were "used to provide support for those clients that provided us their software."); 1754:8-15 (Whittenbarger) (Siebel environment used for internal training); 1757:14-1758:5 (Whittenbarger) (Rimini "set[s] up environments to troubleshoot issues"); PTX 181 (June 2009 installation of JD Edwards was "to be used for any configuration, testing and development required"), 190 (JD Edwards environments associated with specific customers continued to be created through February 2010), 310.

2. Defendants' Infringement Was Willful

Oracle presented substantial evidence of willful infringement, and there is no basis to enter judgment for Defendants on this issue. Defendants had notice of Oracle's copyrights. Tr. 1546:5-20 (Screven); 1667:16-19 (Grigsby) & PTX 200; 286. Customers also provided Defendants with copies of the licenses and identified the unambiguous terms prohibiting Rimini's local copies and cross use. *E.g.*, PTX 15, 16, 18, 23, 31. The jury may disregard the

self-serving testimony by Ravin and others regarding their purported beliefs, especially given the many warnings by customers and Defendants' knowledge of the TomorrowNow lawsuit and shutdown. *E.g.*, Tr. 412:1-414:13 (Ravin); PTX 23, 30, 31, 465, 604. Rather than good faith, the evidence shows lies and concealment internally at Rimini, as well as externally to customers and the Court. In light of this evidence, Defendants cannot possibly obtain judgment on this issue. *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 959 (9th Cir. 2001).

3. Ravin Is Liable for Contributory and Vicarious Infringement

Because Oracle has shown that Ravin knew of or had reason to know of Rimini's infringing activity, and that he intentionally induced or materially contributed to the infringing activity, the jury may find him liable for contributory infringement. *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1170-73 (9th Cir. 2007). Ravin knew that Rimini had local environments on its systems that contained Oracle software, and that Rimini cross-used Oracle software "all the time." Tr. 250:1-8, 803:3-12 (Ravin). As Rowe testified yesterday, Ravin directed virtually all of the lies. As discussed above, he set the stage for or personally directed several acts of infringement by Rimini. Ravin has "policy and operational control" over Rimini. Tr. 240:21-23 (Ravin). Because Ravin had "full operational control" over Rimini, and because he specifically directed infringing actions, a jury may find him liable for contributory infringement. *UMG Recordings, Inc. v. Bertelsmann AG*, 222 F.R.D. 408, 413 (N.D. Cal. 2004); *In re Napster, Inc. Copy. Litig.*, 377 F. Supp. 2d 796, 799 (N.D. Cal. 2005).

Ravin is vicariously liable for copyright infringement because he received a direct financial benefit from Rimini's infringing activity, and had the right and ability to supervise or control that infringing activity. *Perfect 10*, 508 F.3d at 1173-74; *Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004). Ravin is the single largest shareholder of Rimini, and has been since its inception. Tr. 240:24-241:3. Ravin had supervision and control over all aspects of Rimini's infringement, from the creation of local development environments at Rimini to the downloading of massive amounts of Oracle software and support materials, to the generating of sales messages misrepresenting Rimini's business practices (as Mr. Rowe testified). Tr. 415:8-416:5

(Ravin); Tr. 1588:10-14 (G. Lester); PTX 14; Tr. 240:21-23 (Ravin) (Ravin had "policy and operational control" over Rimini). Copyright Misuse Is Not an Available Defense

The Court struck Defendants' copyright misuse defense from the case and dismissed Rimini's counterclaim for copyright misuse. Dkt. 111 at 6–8. In so doing, the Court properly ruled that a restriction which "is only a limitation on third-party business models and is not a restriction on Oracle customers . . . does not constitute copyright misuse." Dkt. 111 at 8; *accord Rimini St., Inc. v. Oracle Int'l Corp.*, No. 2:14-CV-01699-LRH, 2015 WL 4139051, at *3 (D. Nev. July 9, 2015). Rimini did not seek reconsideration of that order, nor has Rimini sought to amend its answer or counterclaims since the Court struck the defense.

B. Defendants Are Liable For All Non-Copyright Claims

1. Defendants Intentionally Interfered with Oracle's Prospective Economic Advantage

First, Oracle identified each customer at issue and showed that it had a business relationship and future expectancy with each. Tr. 1778:20-1781:17, 1781:22-1790:7, 1837:5-17, 1843:14-1844:8, 1844:18-1845:17 (Dean); PTX 5469, 5470. Rimini ignores that, asserting instead that Oracle's interference theory is analogous to one where the plaintiff tried to avoid an interference element (identifying the prospective customers) by asserting a theory of generalized harm that the plaintiff called "interference with the market." *Westside Center Assocs. v. Safeway Stores 23, Inc.*, 42 Cal. App. 4th 507, 523 (Cal. Ct. App. 1996); Defendants Rimini Street, Inc.'s and Seth Ravin's Rule 50(a) Motion for Judgment As A Matter Of Law ("Mot.") 4, 11. Rimini is wrong.

Second, Rimini misapprehends the predicate wrongful conduct for Oracle's interference claim. Mot. 7, 13. The predicate wrongful conduct is (1) fraud or intentional misrepresentation concerning Rimini's operations and (2) Rimini's wrongful downloading conduct. *E.g.*, Dkt. 747 at 12-13.

Third, Rimini argues about the so-called "competitor's privilege," but such a privilege cannot apply to Oracle's interference claims because of the narrow predicates. A competitor's fraud can never be privileged or justified. Restatement (Second) Torts, § 768 & cmt. (d). Nor

can statutory violations. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1159-61 (2003). Were the law otherwise, Rimini's conduct is so beyond the pale the jury will have no trouble concluding it could not be privileged or justified.

Fourth, Rimini ignores binding authority to argue a "specific intent" requirement. Mot. 7-8, 12. The Nevada Supreme Court squarely rejected that contention. *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nevada*, 106 Nev. 283, 288 (1990) ("We [. . .] reject LTR's contention that this tort requires a specific intent to harm akin to proof required in a criminal offense." (emphasis supplied) (addressing intentional interference with prospective economic advantage). So did the California Supreme Court in *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1161-62 (2003)—but Rimini again cites *DeVoto v. Pacific Fidelity Life Insurance Co.*, 618 F.2d 1340 (9th Cir. 1980), which *Korea Supply* expressly rejected as incorrectly interpreting California law.

Finally, Rimini offers a misplaced preemption argument. "Claims under state law are preempted where: (1) the work at issue comes within the subject matter of copyright, and (2) the state law rights are equivalent to any of the exclusive rights within the general scope of copyright." *Grosso v. Miramax Film Corp.*, 383 F.3d 965, 968 (9th Cir. 2004) (internal citation and quotation marks omitted). Intentional interference has an "extra element" that is qualitatively different from copyright. Oracle's theory requires proof of misrepresentation or statutorily prohibited conduct involving a computer. *Valente-Kritzer Video v. Pinckney*, 881 F.2d 772, 776 (9th Cir. 1989) ("the element of misrepresentation . . . distinguishes [a claim for fraud] from one based on copyright"); *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 957 (9th Cir. 2010) ("tortious interference with contract" claim is not preempted; "because contractual rights are not equivalent to the exclusive rights of copyright, the Copyright Act's preemption clause usually does not affect private contracts"); *Computer Management Assistance Co. v. Robert F. DeCastro, Inc.*, 220 F.3d 396, 404–05 (5th Cir. 2000) ("Because a cause of action under the Louisiana Unfair Trade Practices Act requires proof of fraud, misrepresentation or other unethical conduct, we find that the relief it provides is not 'equivalent' to that provided in the Copyright Act and, thus, it is not preempted").

2. Defendants Breached and Induced Customers to Breach Oracle's Terms of Use

Oracle's inducing breach of contract claim concerns Oracle's terms of use, not software licenses. Dkt. 146, ¶¶ 116-121. Each Oracle support site user must agree to abide by terms of use, creating a valid contract between Oracle and the user when Oracle provides software access in consideration. Tr. 862:12-871:16 (Allison); Tr. 931:17-932:10 (Catz).

Using customer credentials, Rimini agreed to these terms of use, but then violated that contract by engaging in automated downloading conduct that the contract specifically prohibited. Tr. 481:8-483:5 (Ravin); 867:6-868:17 (Allison); PTX 19. There is no dispute that Oracle performed its obligations under its terms of use as Rimini accessed and downloaded material from Oracle's support sites. Tr. 1157:21-1158:9 (Hicks); 1753:15-21 (Whittenbarger). Rimini induced breach of that contract when it improperly accessed support sites on behalf of its customers. Tr. 1119:22-1120:25 (Allison); PTX 1569 ("the Materials may be . . . accessed by third parties who are your agents or contractors acting on your behalf solely for your internal business operation and you are responsible for their compliance with these Metalink Terms of Use.") Such breach is the predicate to Oracle's inducement of breach of contract claim.

First, the terms of use are a valid contract between Oracle and Rimini's customers. Tr. 861:7-16; 862:23-863:9; 862:3-7; 863:15-864:8; 865:21-866:16 (Allison). *Second*, Rimini knew Oracle's terms of use existed. The evidence establishes that Ravin and other Rimini employees reviewed, discussed, and evaluated the Oracle Terms of Use that appeared on the Oracle websites, and they recognized that the terms of use prohibited automated downloads. PTX 19 and 20; Tr at 481:6-482:19 (Ravin); Tr. 824:25-825:10, 869:11-15 (Allison). *Third*, Rimini intentionally engaged in conduct intended to disrupt the contract. Ravin instructed Rimini employees to use the unauthorized automated tools regardless. PTX 22, 27; Tr. 481:8-483:5; 485:23-486:19 (Ravin); 1140:17-1141:8 (Chiu); 1165:8-1166:11 (Hicks); PTX 1256. *Fourth*, as testified by Oracle expert Christian Hicks, Rimini's unauthorized access burdened Oracle's systems and slowed their performance, and Rimini used automated tools to download broad

ranges of materials that were not for any particular customer. Tr. 1150:2-14; 1160:8-14 (Hicks). In particular, from late 2008 through January 2009, Rimini downloaded software and support materials, knowing that its "massive download volumes" were harming Oracle's systems. PTX 38; 42; Tr. 1175:17 (Hicks).

Fifth, Rimini's conduct was a substantial factor in causing Oracle harm. Tr. 1171:7-1174:4, 1175:2-16-1176:18 (Hicks); Tr. 1212:8-1213:2 (Renshaw); PTX 5372; 206 (describing cause of harm); 482 (same). *Holcomb v. Georgia Pacific, LLC*, 289 P.3d 188, 196 (Nev. 2012) (Nevada uses "substantial factor" causation).

3. Defendants' Access to and Downloading from Oracle's Support Websites Was Unauthorized

The jury may find Defendants liable under the federal Computer Fraud and Abuse Act (CFAA), the California Computer Data Access and Fraud Act (CDAFA), and Nevada's computer crime law (NCCL) given the evidence adduced at trial. 18 U.S.C. § 1030; Cal. Penal Code § 502; Nev. Rev. Stat. § 205.4765.

First, Rimini argues that Oracle's computer-related claims are "simply breach-of-contract claims dressed up" as statutory violations. Mot. 13. Oracle's terms of service did establish the scope of authorization and notified Rimini of those limits. But the fact that Oracle established access restrictions in a binding contract that Rimini breached does not change the fact that Oracle met the elements for each such claim. *E.g.*, *NovelPoster v. Javitch Canfield Grp.*, No. 13-CV-05186-WHO, 2014 WL 3845148, at *7 (N.D. Cal. Aug. 4, 2014).

Second, Rimini argues that Defendants lacked notice and intent. Mot. 14-15. That is incredible: Ravin admitted he and others actually knew about the Terms of Use, read them, understood them—and made a calculated decision to violate them anyway. Tr. 481:24-483:15; 824:25-825:16 (Ravin); PTX 20-23. Oracle caught Rimini, attempted to block its IP addresses, and sent notices about the illegal downloading. Rimini persisted—intentionally evading Oracle's IP blocking and engaging multiple virtual machines. Tr. 769:4-770:9 (Ravin); 1171:7-1172:8, 1175:23-1176:3 (Hicks); Tr. 1232:8-1233:14 (Baron); 1589:25-1592:2 (G. Lester).

As for Rimini's attempts to invent a constitutional problem (Mot. 14, 16), there are "no serious constitutional doubts" about computer crime statutes when applied to facts such as this case. *Craigslist Inc. v. 3Taps Inc.*, 964 F. Supp. 2d 1178, 1184 (N.D. Cal. 2013). The "average person" will not unwittingly violate the law because he does not innocently "bypass an IP block set up to enforce a banning communicated via personally-addressed cease-and-desist letter." *Id.* at 1184; *see also Creative Computing v. Getloaded.com LLC*, 386 F.3d 930, 934 (9th Cir. 2004) (CFAA verdict upheld where defendant signed up fake "customers" for the plaintiff's website and used actual customers' login credentials to access information to which it was not entitled); *United States v. Nosal*, 676 F.3d 854, 862 (9th Cir. 2012) (en banc) (interpreting an ambiguous term in the CFAA; quoting precedent, "We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly").

Third, Rimini offers meritless arguments for heightened mental states. The Ninth Circuit disagrees, holding that computer crime statutes mean what they say. Foror example, "[i]n contrast to the CFAA, the California statute [CDAFA] does not require unauthorized access. It merely requires knowing access." *United States v. Christensen*, No. 08-50531, 2015 WL 5010591, at *14 (9th Cir. Aug. 25, 2015).

Fourth, Rimini tries to limit Oracle's computer statute damages in contravention of the Ninth Circuit and the statutes' plain text. The CFAA permits "economic damages," which permits "damages for loss of business" as well as the costs of "restor[ing] or maintain[ing] some aspect of a business affected by a violation." *Creative Computing*, 386 F.3d at 935. Similarly, the CDAFA permits "compensatory damages" and the NCCL provides damages "for any response costs, loss or injury suffered" as a result of a violation. Cal. Penal Code § 502(e)(1); Nev. Rev. Stat. § 205.511(1)(a). Oracle spent $27,000 on labor investigating "why the computer systems were stalling or deadlocking" from December 2008 through January 2009. Tr. 1831:2-21 (Dean). Oracle presented evidence explaining which customers Defendants were on-boarding when they damaged Oracle's computers with massive unauthorized crawls (Tr. 1180:19-1181:1 (Hicks)), and Oracle's damages expert explained that those customers accounted for $14.4

million of Oracle's lost profits. Oracle has admitted evidence showing the value of these extracts to attracting customers. *E.g.*, PTX 206; 482.

Fifth, Rimini's denial that Oracle's systems suffered harm is contrary to the evidence. Rimini's unauthorized access harmed Oracle's systems, causing slowdowns, errors, and deadlocks, and eventually crashing Oracle's server. Tr. 1172:9-15, 1174:5-1175:1, 1179:9-15 (Hicks); Tr. 1210:22-1211:10 (Renshaw). Rimini used the IDs for multiple customers to crawl Oracle's website, causing more than 184,000 deadlocks. Tr. 1180:19-1181:4 (Hicks). Rimini's crawls led to errors and eventually crashed Oracle's systems. Tr. 1201:14-1202:11; 1210:22-1211:10 (Renshaw); PTX 665, 669.

Finally, the state computer law claims contain extra elements (requiring computer misconduct) and protect qualitatively different rights (e.g., the right to be free from unauthorized computer intrusions). They are not preempted. *Craigslist, Inc. v. Autoposterpro, Inc.*, No. CV 08 05069 SBA, 2009 WL 890896, at *2-3 (N.D. Cal. Mar. 31, 2009) (analyzing and rejecting copyright preemption over the CDAFA).

C. Defendants' Causation Argument Is Contrary To Law And To The Trial Record

1. Oracle's Lost Profits Showing Meets All Applicable Legal Standards

Facing judgment for years of wrongdoing and free-riding on Oracle's intellectual property, Rimini seeks an impossible standard to avoid compensatory damages for its wrongdoing. *Palmer v. Conn. Railway & Lighting Co.*, 311 U.S. 544, 560-61 (1941).

Oracle's rigorous damages showing meets any applicable standard. As a general matter, plaintiffs are not "obligated to prove their losses with precision." *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1170-71 (9th Cir. 2013), *cert. denied sub nom. City of Newport Beach, Cal. v. Pac. Shores Properties, LLC*, 135 S. Ct. 436 (2014). Once a plaintiff establishes "the *fact* of damages, less certainty (perhaps none at all) is required in proof of the *amount* of damages. While the proof of the *fact* of damages must be certain, proof of the *amount* can be an estimate, uncertain or inexact." *Mid-America Tablewares, Inc v. Mogi Trading Co.*, 100 F.3d 1353, 1367 (7th Cir. 1996) (quoting Robert L. Dunn, *Recovery of Damages for Lost Profits* § 1.3 at 11) (emphasis in original). A jury is "entitled to determine the precise quantum

of damages by drawing 'just and reasonable' inferences from the evidence[.]" *Pac. Shores Properties*, 730 F.3d at 1171.

Rimini attempts to sidestep this settled law by claiming that "causation" requires proof for "*each* customer" and "*each* lost sale." Mot. 3 (citing *Oracle Corp. v. SAP AG*, 765 F.3d 1081 (9th Cir. 2014) ("*SAP AG*") and *Polar Bear Prods, Inc. v. Timex Corp.*, 384 F.3d 700 (9th Cir. 2004)). Rimini is incorrect as discussed below.

Polar Bear "reaffirm[ed] the principle" that the requirements for copyright lost profits are "akin to tort principles of causation and damages" discussed above. *Polar Bear Prods*, 384 F.3d at 708-09 (citing *Mackie v. Rieser*, 296 F.3d 909, 915 & n.6 (9th Cir. 2002)). If anything, copyright damages "should be broadly construed to favor victims of infringement." *On Davis v. The Gap Inc.*, 246 F.3d 152, 164 (2d Cir. 2001), *block quoted and cited three times with approval at SAP AG*, 765 F.3d at 1088; *see also Polar Bear*, 384 F.3d at 709 (an infringer "is in no better position to haggle [. . .] than an ordinary thief").

And in *SAP AG*, the Ninth Circuit's holding reversed the district court and *increased* Oracle's lost profits damages to $356.7 million *based on substantially the same methodology* as Oracle presented to the jury here. 765 F.3d at 1094-1095.

2. Oracle Showed That Defendants Caused Oracle's Harms

Rimini's entire business model was infringement. Oracle proved—through admissions from Ravin and others, from Rimini documents, and through expert and documentary evidence—that Rimini's massive infringement enabled it to obtain early customers and grow with minimal investment. Without its short-cuts Rimini could *never* have grown beyond what Rimini's own documents recognize as the small world of unstable and minimally relevant niche players in third-party support. *E.g.*, Tr. 1453:22-1476:6 (Maddock). Rimini obtained its first customers who became references through infringing means. Tr. 1920:10-1921:5 (Dean) ("Rimini's entire business model was based on the allegations of wrongdoing from the very first minute"). Rimini simply could not have afforded the investment required. Tr. 443:4-445:6, 524:23-525:12, 526:16-527:3, 531:24-534:1 (Ravin). The evidence shows that this illegality gained Rimini its first customers and references and its most important customers and most

common references, and was then necessary to Rimini's later growth. PTX 2155; Tr. 381:10-381:25, 443:4-20 (Ravin); 1938:17-1941:3 (Dean); Tr. 214:16-216:19, 233:15-233:24 (Davis).

Oracle likewise proved a pattern and practice of lying to customers about what Rimini did and how Rimini operated. Rimini *admits* that it could never have won any accounts if customers did not believe the lies. Tr. 312:2-15 (Ravin). Rimini did so through "standard messaging"—consistent, repeated lies to customers and prospective customers. *E.g.*, Tr. 319:10-14, 453:20- 454:10, 471:24-472:4, 547:23-548:1 (Ravin); 1396:10-14 & 1398:2-5, 1398:20-1399:7, 1406:10-1407:13, 1434:21-24 (Maddock); PTX 241; 5352; *see also* Tr. 1412:6-10 & 1414:9-12 (Maddock) (admitting that Rimini had no legitimate basis for its falsehoods). Customers relied on that deception for reasons that are common to all customers: "Was as it important to you to hear from Rimini Street in making your decision to sign with Rimini Street that they would use your software to you and you only? A. Oh, yes. Q. Why was that important? A. Because we have the contract with Oracle or PeopleSoft, and that would violate that contract." Tr. 2061:25-2062:8 (Strong); Tr. 1703:23-1075:20 (Yourdon): *see also, e.g.,* Tr. 1389:14-1390:1 (Higa); 1528:19-1529:2 (Carter); Tr. 1533:19-25, 1534:15-21 (Ward); 1705:11-1706:3 (Yourdon).[4] As Ravin wrote, it "would not matter" if Rimini had the best "resources in the world," because a client "first and foremost must believe they had the right to be with us and use their software . . . or the rest is just noise!" PTX 554 (ellipses in original); Tr. 1920:10-1921:5 (Dean) (if questions about compliance with Oracle's license are "not answered properly, then [customers] think that they can go to Rimini, and they continue to tell other customers this is okay to do when it's not").

To the extent that Rimini did not turn over evidence confirming that it overtly misrepresented its offerings to any particular client, Oracle has established (1) a pattern and practice of misrepresentations providing an ample basis for the jury's verdict, *e.g.* Tr. 1398:20-

[4] As Rimini's own counsel put it, it is simply "common sense" that no customer would have contracted with Rimini if Rimini had told the truth about its operation and systematic illegal conduct. Tr. 20:8-20. It is curious that Rimini now argues the jury cannot infer from the customer depositions played at trial—and from expert testimony and Rimini's own admissions—that Rimini's other customers would likewise have not gone to Rimini if its lies, deception, and computer violations had been disclosed.

1399:7, 1400:17-20, 1423:1-20, 1431:20-1432:8 (Maddock); (2) a chain of references leading back to foundational clients and references that were misled, Tr. 373:8-375:1, 450:5-453:15, 536:25-539:5, 694:15-695:3 (Ravin), 1706:4-1707:3 (Yourdon); or (3) showed that Rimini intentionally misled or failed to disclose that its entire operation was shot-through with wrongdoing. Tr. 1400:8-1401:1, 1404:2-10 & 1421:20-1422:3 (Maddock) (lies about cross use); *see also* 1407:1-5 (lies about cloning).

Ignoring this, Rimini falsely asserts that Oracle's lost profits damages are premised on an assumption of causation that "every Rimini Street customer" left because of Rimini's misconduct (Mot. 1) or that "none of the Customers that left Oracle" would have gone elsewhere. Mot. 5. This overlooks the extensive record of pattern-and-practice evidence discussed above, ignores voluminous evidence "specific" to particular customers,[5] and mischaracterizes Oracle's expert testimony. This is not "interference with the market." *Westside Center Assocs. v. Safeway Stores 23, Inc.*, 42 Cal. App. 4th 507, 523 (Cal. Ct. App. 1996). Oracle identified each customer at issue and showed that it had a business relationship and future expectancy with each.

In fact, Oracle's expert Ms. Dean looked at the evidence on a per-customer basis and Ms. Dean excluded certain customers. For example, Rimini's citations neglect the pages where Ms. Dean explains that she did not assume the entire Rimini customer base, and explains how and why she proceeded on a "per customer basis" to exclude various customers. Tr. 1778:20-1781:17, 1781:22-1790:7, 1837:5-17, 1843:14-1844:8, 1844:18-1845:17 (Dean); PTX 5469, 5470. Rimini also overlooks that Ms. Dean applied general and specific attrition rates to discount Oracle's lost profits figure. That methodology accounted for attrition unrelated to the infringement. Tr. 1801:17-25, 1804:10-1805:6, 1808:2-6, 1856:19-1857:4 (Dean).

Furthermore, Rimini's admissions corroborate Ms. Dean's opinions and show that they are, if anything, generous to Rimini. Tr. 548:11-549:11(Ravin) (Ravin confirming that $300m in Oracle lost profits was a reasonable estimate Rimini repeated to numerous third parties); *see also* PTX 3 (investor solicitation) & Tr. 545:21-546:13 (Ravin).

[5] *See also, e.g.*, Tr. 375:25 – 376:7 (Ravin) & PTX 29; Tr. 377:4-13 (Ravin); PTX 310; 619; 35; 17; 5459; 23-24; 604; 15; 56, 59; 205.

Oracle's approach is more rigorous than the lost profits damages methodologies routinely upheld for both copyright[6] and interference torts[7]—where courts routinely uphold verdicts when experts perform *only* the last step of Ms. Dean's methodology.

3. There Were No Viable Non-Infringing Alternatives

Defendants misstate the law regarding causation and non-infringing alternatives in copyright cases. In a copyright infringement action, "once a copyright holder establishes with reasonable probability the existence of a causal connection between the infringement and a loss of revenue, the burden properly shifts to the infringer to show that this damage would have occurred had there been no taking of copyrighted expression." *Harper & Row Pubs., Inc. v. Nation Enters.*, 471 U.S. 539, 567 (1985). This includes the burden to show the existence of non-infringing alternatives. 5 Modern Scientific Evidence § 45:17 (West 2015) ("Whether any of these harmful effects [of copyright infringement] occurred will depend on whether non-infringing alternatives were available to defendant or other competitors"); *see also Stevens Linen Assocs., Inc. v. Mastercraft Corp.*, 656 F.2d 11, 15 (2d Cir. 1981) (remanding copyright case for calculation of damages on grounds that it was defendant's burden to show that its infringement did not cause every one of plaintiff's regular customers to switch to defendant). Defendants' citations to the burden of proof in patent cases, Mot. 27, are inapposite, and Defendants cite no copyright cases in support of their position on burden-shifting.

[6] *Stevens Linen*, 656 F.2d at 14 ("In establishing lost sales due to sales of an infringing product, courts must necessarily engage in some degree of speculation"); *Agence France Presse v. Morel*, No. 10-CV-2730 AJN, 2014 WL 3963124, at *12-13, 15 (S.D.N.Y. Aug. 13, 2014) (reasonable for jury to conclude that plaintiffs would have made the number of sales that were made by the infringer); *Key West Hand Print Fabrics, Inc. v. Serbin, Inc.*, 269 F. Supp. 605, 613 (S.D. Fla.1966) (awarding lost profits when customer testified she cancelled large order because defendant flooded market with cheap counterfeit), *aff'd* 381 F.2d 735 (5th Cir. 1967) (*per curiam*); *see also RSO Records, Inc. v. Peri*, 596 F. Supp. 849, 860 (S.D.N.Y. 1984).

[7] *Forro Precision, Inc. v. IBM Corp.*, 673 F.2d 1045, 1052 (9th Cir. 1982) (upholding intentional interference jury verdict using future growth projections; applying California law); *Frantz v. Johnson*, 116 Nev. 455, 469-70 (2000) (upholding intentional interference jury verdict; explaining that expert permissibly calculated "lost profits for a five-year period . . . by applying the percentage of profit that [the plaintiff] had made from past sales to a reasonable approximation of future sales"); *Homoki v. Conversion Svcs., Inc.*, 717 F.3d 388, 399 (5th Cir. 2013) ("Extrapolating future profits from past profits is an accepted method of proving lost profits" (intentional interference)).

Defendants have introduced little to no evidence regarding the existence of any viable non-infringing alternatives, and the jury is free to disregard any such evidence.[8] Rimini's marketing head, Rowe, testified to one non-infringing alternative (Spinnaker) he considered significant and that was only for JD Edwards; all others combined took only two customers from Rimini. Oracle has introduced more than sufficient evidence to show that no viable, non-infringing alternatives to Rimini existed during the relevant time period. Tr. 1475:19-1476:1 (Maddock) (agreeing that Oracle is Rimini's most frequent competitor since TomorrowNow closed), 1477:6-20 (no other third-party support company supported multiple product lines), 1488:20-1489:12 (self-support is too risky); 1688:17-1689:25 (Yourdon) (no viable alternatives), 1693:5-1396:11 (same); 1790:8-1796:13 (Dean) (same), 1909:1-1912:18 (same); PTX 5350 ("I REALLY hate discounting anything particularly when [we] have no competition") (emphasis in original). Even if Oracle were to have the burden of proof as Defendants suggest, Oracle has more than met that burden.

4. Defendants' Remaining "Causation" Arguments Are Irrelevant

Rimini's remaining copyright damages cases are simply inapt. One rejects a presumption of damages not relevant here. *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 514 n.8 (9th Cir. 1985). Two discuss a near-total lack of evidence. *Crunchyroll, Inc. v. Pledge*, No. C 11-2334 SBA, 2014 WL 1347492 at *3-4 (N.D. Cal. Mar. 31, 2014) (plaintiff offered "*no evidence*" other than some internet posts showing it had some devoted fans); *Cohen v. U.S.*, 100 Fed. Cl. 461, 480-81 & n.13 (2011) (summary judgment denied because there was only evidence of a single lost sale). The other noted that the plaintiff bears the burden—then denied summary judgment to the defendant. *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 25 F. Supp. 2d 395, 401-2 (S.D.N.Y. 1999).

Rimini also uses its "causation" conceit to invent theories Oracle never asserted. Each of these nonexistent theories requires pretending that this is not a trial of Oracle's direct claim against Rimini, but a trial where Oracle attempts to recover on behalf of absent plaintiffs. *E.g.*,

[8] Defendants have also represented repeatedly that they will not introduce evidence about whether TomorrowNow or CedarCrestone was an infringer. *See* Tr. 1615:22-24 (sidebar); Defs' Opp'n to Mot. to Exclude Simmons and Hilliard, Dkt. 835 at 5.

Mot. 5 (referencing "due process rights to present individual defenses as to each *claim*"). (emphasis supplied) The Oracle entities are the only plaintiffs, and they assert claims on their own behalf. There are no absent class members to protect and Rimini is here at trial, free to present any admissible evidence in its defense of its legal rights. It happens that Oracle suffered through lost customers, as in many business disputes. That does not turn this into a representative action, and Rimini's arguments from such cases[9] are irrelevant.

D. Oracle Is Entitled To Copyright Damages

1. Rimini's Entire Business Model Depended upon Infringement

Defendants competed with Oracle to provide support for PeopleSoft, JD Edwards, and Siebel software during the time period relevant to this case. Dkt. 528, 8:7-15 (Undisputed Facts 11-15). As discussed above, Rimini reproduced, distributed, and created derivative works from Oracle's copyrighted support materials in the course of providing their competing support offering. Defendants nonetheless claim that OIC, the copyright holder, may not recover its lost profits because OIC's lost license fees have "*nothing to do* with the value of its copyright in its software." Mot. 26. Not so.

Oracle has established that Rimini's support depended upon infringement. Tr. 164:4-165:6, 217:6-218:5, 219:3-21 (Davis); Tr. 1271:12-1272:4 (Ransom); PTX 6001. The jury may find that the support that Rimini provided has everything to do with Oracle's copyrighted works.

2. Oracle's Damages Model Is Appropriate

a) OIC's Sublicense Fees Are Lost Profits

A copyright claimant must establish "a causal link between the infringement and the monetary remedy sought." *Polar Bear*, 384 F.3d at 708. Before trial began, the Parties stipulated that OIC would have received 39% of any support revenue that Oracle America would have received from sales of support renewals. Dkt. 528, 18:20-24 (Undisputed Facts 30-32). Oracle seeks the profits that OIC lost as a result of Rimini's infringing support. *Polar Bear*, 384

[9] *Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007) (punitives only against direct parties); *Duran v. U.S. Bank Nat'l Assoc.*, 59 Cal. 4th 1, 33-34 (2014) (no wage-and-hour class premised on invalid statistics); *Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1108 (1993) (no importing fraud-on-the-market theory from federal securities law under state law).

F.3d at 708. Here, lost profits are properly measured as the sublicense fee that OIC would have received from Oracle America had the relevant customers signed support agreements with Oracle rather than with Rimini.

On near-identical facts, the Ninth Circuit has previously held that OIC's share of Oracle America's lost support profits was an appropriate measure of OIC's lost profits. *See SAP AG*, 765 F.3d at 1094-95 (revising remittitur to include $120.7 million lost profits component of Oracle's copyright damages), *affirming in part and vacating and remanding in part Oracle USA, Inc. v. SAP AG*, 2011 WL 3862074 at *12 (N.D. Cal. Sept. 1, 2011) (describing the $120.7 million as a measure of "Oracle's actual lost support profits"). The Tenth and Eleventh Circuits likewise allow software sublicense fees as measures of actual damages. *Montgomery v. Noga*, 168 F.3d 1282, 1287, 1295 (11th Cir. 1999) (holding that actual damages for distribution of CD-ROMs containing infringing copies of software were properly calculated as a "per copy of the product shipped" sublicense royalty); *Harris Market Research v. Marshall Marketing and Communications, Inc.*, 948 F.2d 1518, 1521, 1525 (10th Cir. 1991) (holding that "projected licensing and processing fees" under a software sublicense agreement were "properly admissible under an actual damages claim for copyright infringement").

b) Oracle's Database Damages Calculations Are Reasonable

Rimini's half-hearted attack on Oracle's database damages claim (Mot. 29) ignores Dean's well-reasoned analysis and should be rejected. Dean analyzed Oracle's database damages under both a lost profit and hypothetical license analysis, using Oracle's public Oracle Database license price list. Tr. 1812:8-1821:4 (Dean); *SAP AG*, 765 F.3d at 1093 (indicating damages based on benchmarks licenses are reliable).[10] Dean correctly rejected Rimini's asserted "alternatives" because they did not reflect the actual use Rimini made of the Database software and, in any event, Rimini needed to build environments using Oracle Database to mirror the customers' environments. Tr. 1947:8-1948:20 (Dean).

[10] The evidence will show that Rimini's damages expert also measures Oracle's database damages using Oracle's public list price as a benchmark. Dkt. 603, Ex. E (Rimini Damages Expert Report) ¶¶ 153-54. This was Oracle's standard database pricing. Tr. 881:10-20, 883:9-884:3 (Allison).

c) Oracle Is Entitled to Infringer's Profits

On infringer's profits, Oracle need only "present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work." 17 U.S.C. § 504(b); *see also Lucky Break Wishbone Corp. v. Sears Roebuck & Co.*, 373 F. App'x 752, 758 (9th Cir. 2010) ("Any doubt as to the computation of costs or profits is to be resolved in favor of the plaintiff") (*quoting Frank Music Corp., Inc.*, 772 F.2d at 514).

Oracle far surpassed its burden. Ms. Dean analyzed and provided evidence of the revenues Rimini earned up to February 2014 from its infringing service for each individual customer at issue. PTX 5470. The evidence was overwhelming that Rimini's entire business model was based on infringement, and that the support revenues Rimini earned were the result of that infringement. *See* Section II, above (describing business model based on infringement); PTX 65 ("making a crap load of money from [Oracle's] free stuff."); PTX 554 ("must believe they had the right to be with us and use their software . . . or the rest is just noise!"). Dean was not "unsure" about what portion of Rimini's PeopleSoft, JD Edwards, and Siebel revenues were related to Rimini's infringement; she was very clear that the evidence showed that they all were. Tr. 1920:13-15 (Dean) ("my opinion is that Rimini's entire business model was based on the allegations of wrongdoing from the very first minute"). Nonetheless, her customer-specific analysis allows the jury to apportion damages however it sees fit. Contrary to Rimini's assertion, that is more than sufficient for "the jury to determine which damages were attributable to infringement." Mot. 28:4-6.

Given Rimini's burden to prove apportionment and deductible costs, Rimini's argument that it has no profits to disgorge is for the jury. Ravin also testified that its profit margin was 50 percent. Tr. 708:18-709:3. And, as explained in Oracle's objections to Rimini's proposed jury instructions, the jury may find Rimini a willful infringer and decline to deduct Rimini's overhead expenses. Dkt. 768 at 47:3-18; *see* Section II and IV(2), above (willfulness evidence).

Rimini misstates the evidence when it claims that Oracle's "figures are entirely duplicative of Rimini's actual damages award." Mot. 28:14-16. Dean explicitly limited her

opinion on infringer's revenues that should be awarded to customers who were not included in her lost profits calculations, ensuring no economic overlap. PTX 5470 (identifying non-duplicative customers); Tr. 1844:18-1845:17 (Dean) (explaining to the jury how to avoid awarding duplicative damages).[11]

E. Oracle Is Entitled To Equitable Relief

Rimini says that California statutory Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, is an "equitable claim" that is available only if the remedy at law is inadequate. Mot. 18. Rimini is wrong. Relief under the UCL is statutory (§ 17203) and provides the Court broad "cleansing power" not available under traditional legal theories. *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 179 (2000); *Fletcher v. Security Pac. Nat'l Bank*, 23 Cal. 3d 442, 449 (1979).

On the merits, the UCL addresses a variety of misconduct through its three separate prongs--"unfair", "unlawful", or "fraudulent"--each of which uses a different test. *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 186 & n.11 (1992). Rimini dedicates most of its argument to a prong Oracle does not press (the "unfairness" prong). Mot. 18. Oracle has established the "unlawful" prong because the UCL "borrows" violations of nearly any state or federal law as predicate conduct. *Cel-Tech*, 20 Cal. 4th at 180. Thus, once Oracle has satisfied the elements of *any* claim asserted (other than copyright infringement) it is eligible for relief under the UCL. And by showing that Rimini's acts or practices confused or deceived its customers or the public, Oracle has established a UCL claim under the "fraudulent" prong. *Comm. on Children's Television v. Gen. Foods Corp.*, 35 Cal. 3d 197, 211 (1983).

As for preemption, Oracle's UCL theories are premised on fraud and computer violations, which invoke qualitatively different rights and involve extra elements. *See Computer Management*, 220 F.3d at 404-5; *Haggarty v. Wells Fargo Bank, N.A.*, No. C 10-02416 CRB, 2011 WL 445183, at *5 (N.D. Cal. Feb. 2, 2011) (UCL claim not preempted when premised on a claim that is not preempted).

[11] Finally, *SAP AG*, 765 F. 3d at 1089-1091, has no application here, as in that case, the court found that as a factual matter, the hypothetical license accounted for the infringer's profits. There is no such hypothetical license here.

Oracle's separately pled theories of equitable relief (unjust enrichment and an accounting) are properly addressed after the jury's verdict.

F. Oracle Is Entitled To Punitive Damages

As stated in Oracle's trial brief, Oracle seeks punitive damages in connection with Oracle's intentional interference, California's Computer Data Access and Fraud Act ("CDAFA"), and Nevada Computer Crime Law ("NCCL") claims. Nev. Rev. Stat. § 42.005; *SMSW Enters., LLC v. Halberd Corp.*, No. CV 13-01412 BRO SPX, 2015 WL 1457605, at *14 (C.D. Cal. Mar. 30, 2015) ("Under Nevada law, a plaintiff may seek recovery for tortious interference with prospective economic advantage. . . . Such recovery may include . . . punitive damages[.]"); Cal. Civ. Code § 3294(a); *Ramona Manor Convalescent Hosp. v. Care Enters.*, 177 Cal. App. 3d 1120, 1141 (Cal. Ct. App. 1986) (punitive damages available for intentional interference); Nev. Rev. Stat. § 205.511(1)(b) (civil plaintiff may recover punitive damages for NCCL claims); Cal. Penal Code § 502(e)(4) (permitting court to award "punitive or exemplary damages" in CDAFA claims).

The evidence establishes a strong basis to award punitive damages on these claims. As explained above, Defendants intentionally engaged in unauthorized downloading and unlawful interference. These were not mistakes: Defendants intentionally accessed Oracle's systems using unauthorized means, causing harm to Oracle's systems, and they intentionally lied to and deceived customers. They continued to engage in this conduct even after they were told the conduct was "illegal" and after they knew of the TomorrowNow lawsuit.[12] The evidence warrants a substantial award of punitive damages. Dkt. 746 at 31-32.

Rimini's arguments are mostly premised on the claim that it "acted with a reasonable good-faith belief that [its] conduct was not illegal" by means of self-serving citations to Ravin's testimony. Mot. 19-20. Rimini's good-faith arguments, to the extent that they are at all persuasive, only go towards Rimini's infringing copyright conduct. Oracle does not seek

[12] Oracle does not rely on Ravin's previous employment with TomorrowNow and the subsequent lawsuit brought against TomorrowNow for Oracle's argument that the Defendants acted with malice and conscious disregard. As explained above, the Defendants' actions on their own sustain claims for punitive damages.

punitive damages in connection with the copyright claim, and these arguments are all meritless. None of its arguments show that Rimini could lie to customers or illegally access Oracle's systems in good faith. Rimini references industry standards, but there is no evidence of any industry standard of lying to customers and committing computer crimes.

For the unauthorized computer access claims, Rimini makes a fruitless attempt to argue that Oracle cannot recover punitive damages by framing them as contract claims. Mot. at 19. These are not contract claims, and the statutes expressly permit an award of punitive damages. Nev. Rev. Stat. § 205.511(1)(b); Cal. Penal Code § 502(e)(4). Rimini acted with conscious disregard of the law and persisted in its unlawful downloading even after its customer told it, bluntly: "Apparently this is illegal." PTX 43. Ravin even testified that although he was aware that the downloading was not authorized, he decided to continue the automated downloads. Tr. 481:24-483:5 (Ravin). Defendants' blatant disregard for the law provides ample grounds for a substantial award of punitive damages on these claims.

There is also no unconstitutional "lack of fair notice" with these claims. Mot. 21. The Constitution prohibits punishment if rendered under a statute or regulation that "fails to provide a person of ordinary intelligence fair notice of what is prohibited." *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012) (quotations omitted). Ravin testified that he *knew* at the time that the computer access was unauthorized. Tr. 482:18-19 ("Yes, I made the decision to continue to use the automated [tools] despite those changes"), 726:20-23 ("Q: But you knew they had changed the rules? A: Yes. Q: But you didn't stop using automated tools? A: No [....]").) As a result, Rimini's cited authorities are completely inapposite. *See Fox Television*, 132 S. Ct. at 2317-18 (fleeting expletives); *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 1267 (2012) (agency regulation of pharmaceutical sales representatives under the Fair Labor Standards Act); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422, 423 (2003) (defendant should not be penalized for harm done to non-parties); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 247 (1994) (punitive-damages provision does not apply to case "that was pending on appeal when the statute was enacted").

G. Defendants Are Not Entitled to Judgment Regarding Injunctive Relief Or Prejudgment Interest

After the jury reaches a verdict, Oracle plans to ask the Court to issue a permanent injunction and also award prejudgment interest. There is no basis for granting Defendants judgment on that relief, at this stage or based on the evidence.

Injunctive relief is necessary and appropriate. Rimini's claim that it "ceased" its unlawful conduct is false. As detailed in Oracle's complaint in the second action (*Rimini St., Inc. v. Oracle Int'l Corp.*), Ravin and Rimini are continuing to infringe Oracle's copyrights. The trial evidence shows willful infringement by Ravin and Rimini, continuing even after TomorrowNow shut down and after Oracle sued Rimini, which warrants injunctive relief. *E.g.*, *Broad. Music, Inc. v. Blueberry Hill Family Restaurants, Inc.*, 899 F. Supp. 474, 483 (D. Nev. 1995) (issuing permanent injunction where defendant's history of unlawful conduct did not "inspire confidence" that there was "no threat of future infringements"); Dkt. 746 at 24-25 (explaining basis for seeking permanent injunctive against Rimini and Ravin after jury renders verdict).

Prejudgment interest is also warranted. Copyright infringement cases are ones where "prejudgment interest should be awarded as a matter of course." *Murphy v. City of Elko*, 976 F. Supp. 1359, 1362 (D. Nev. 1997) (citing *Frank Music Corp.*, 886 F.2d at 1551–52). This is especially true in cases such as this, involving undisputed copyright infringement. *Polar Bear*, 384 F.3d at 718 ("It is not difficult to imagine a case involving undisputed copyright infringement—as is the case here—in which prejudgment interest may be necessary to discourage needless delay and compensate the copyright holder for the time it is deprived of lost profits or license fees"). There was never any "reasonable dispute" as to whether Rimini was infringing, and an award of prejudgment interest is appropriate. *See* Dkt. 746 at 29.

H. There Is No Basis To Order A New Trial

With their Rule 50 motion, Defendants include and unfounded request for a new trial based on the introduction of certain evidence concerning TomorrowNow and the exclusion of certain "attorney letters." Mot. at 29-30. The parties previously briefed and argued these issues (*e.g.*, Dkt. 797, 799), and the Court's evidentiary rulings are well-founded——in fact

conservative about what may be admitted. Defendants' claims of due process violations and prejudice (Mot. at 30) are baseless, and there are no grounds for a new trial. Fed. R. Civ. P. 61 ("Unless justice requires otherwise, no error in admitting or excluding evidence [...] is ground for granting a new trial [....]"). The Court correctly admitted limited evidence concerning TomorrowNow only after Defendants opened the door to that evidence. Tr. 737:12-25 (Court: "Mr. Ravin has clearly opened the door"); Tr. 752:14-754:24. The Court provided limiting instructions to the jury (Tr. 944:19-945:17), and the Court will provide additional instructions before the jury renders any verdict.[13] The Court also ordered redactions to evidence to eliminate any undue prejudice. Tr. 496:25-497:19, 501:22-502:5. Given that Defendants chose to open the door, and the extraordinary steps taken by Oracle's counsel and the Court to avoid any undue prejudice based on this evidence, there is no basis for any new trial. *E.g.*, *Ateliers de la Haute-Garonne v. Broetje Automation-USA Inc.*, 85 F. Supp. 3d 768, 780-81 (D. Del. 2015) (denying motion for new trial where defendant opened door to evidence regarding decision in other action); *Wessinger v. Westinghouse Elec. Co.*, No. 3:06-1346, 2008 WL 2077786, at *3-*4 (D.S.C. May 8, 2008) (no undue prejudice where party opened the door).

V. CONCLUSION

For the reasons stated above, Defendants' Rule 50(a) Motion For Judgment As A Matter Of Law should be denied.

Dated: September 30, 2015

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[13] Defendants' claim of undue prejudice is particularly unfounded given that Oracle proposed a preliminary instruction on TomorrowNow (Dkt. 752 at 3) and Defendants argued against any such instruction (Dkt. 766 at 4).

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2015, I electronically transmitted the foregoing ORACLE'S OPPOSITION TO RIMINI STREET, INC.'S AND SETH RAVIN'S RULE 50(a) MOTION FOR JUDGMENT AS A MATTER OF LAW to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

/s/ Thomas S. Hixson
Thomas S. Hixson